

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JACQAUUS L. MARTIN,)	
)	
Plaintiff,)	4:03cv3100
)	
vs.)	MEMORANDUM AND ORDER
)	(appeal)
SCOTT E. HAYNE, et al.,)	
)	
Defendants.)	

The plaintiff, JacQaus L. Martin, a prisoner, has filed a Notice of Appeal (filing no. 140) from this court's Memorandum and Order (filing no. 137) and Judgment (filing no. 138) finding for the defendants after trial on the merits of the plaintiff's claims. In addition, the plaintiff has filed an Application for Leave to Proceed In Forma Pauperis ("IFP") on appeal (filing no. 141), supported by a certified copy of the plaintiff's prisoner trust account (filing no. 142), and a Motion for Copy of the Trial Transcript (filing no. 139).

Because the plaintiff has previously received leave to proceed IFP in the district court, and because this appeal is taken in good faith, the plaintiff may continue to proceed IFP on appeal pursuant to Fed. R. App. P. 24(a)(3).¹ 28 U.S.C. § 1915(b)(1) states how the initial appellate partial filing fee is calculated: "[I]f a prisoner ... files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal."

¹Fed. R. App. P. 24(a)(3) states:

(a) Leave to Proceed in Forma Pauperis....
(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless the district court-- before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. In that event, the district court must state in writing its reasons for the certification or finding.

In this case, the plaintiff is responsible for an initial partial appellate filing fee of \$1.67 for the filing of this appeal.

The plaintiff is hereby notified that leave to proceed IFP on appeal does not exempt him from liability for payment of the full \$255 appellate filing fee in installments regardless of the outcome of the appeal. In addition, by filing a notice of appeal, the plaintiff consents to the deduction by prison officials of the filing fee from the plaintiff's inmate trust account.

After payment of the initial partial appellate filing fee, the remaining balance of the appellate filing fee will be collected by the plaintiff's institution in accordance with 28 U.S.C. § 1915(b)(2), which states:

(b)(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

Thus, the court has granted the plaintiff's motion to proceed IFP on appeal. The court construes filing no. 139 as the plaintiff's effort to order a trial transcript from the court reporter pursuant to Fed. R. App. P. 10(b) and his motion to be relieved of the cost of the transcript. Pursuant to this Memorandum and Order, the cost of the preparation of the requested transcript shall be borne by the United States because the plaintiff is proceeding IFP on appeal. The Clerk of Court shall send a copy of this Memorandum and Order to the Court Reporter, Allan Kuhlman, so that Mr. Kuhlman may prepare a transcript for the plaintiff (appellant) and the Eighth Circuit Court of Appeals. As soon as practicable, Mr. Kuhlman shall forward Mr. Martin's copy of the transcript to him.

THEREFORE, IT IS ORDERED:

1. That filing no. 141, the plaintiff's Application for Leave to Proceed In Forma Pauperis ("IFP") on appeal, is granted;
2. That an appellate filing fee of \$255 is assessed for this appeal, to be paid in accordance with 28 U.S.C. § 1915(b), with an initial partial filing fee of \$1.67 to be remitted to the court when funds are available in the plaintiff's inmate trust account;
3. That, thereafter, all future custodians of the plaintiff shall collect and remit the balance of the \$255 appellate filing fee in the manner required by 28 U.S.C. § 1915(b)(2);
4. That the Clerk of the Court shall send a copy of this order to the appropriate officer for the plaintiff's institution and to the Eighth Circuit Court of Appeals;

5. That filing no. 139 is construed as an order of the trial transcript from the court reporter pursuant to Fed. R. App. P. 10(b) and as a motion to have the expense of preparation of the transcript borne by the United States because the plaintiff is proceeding IFP on appeal;

6. That filing no. 139 is granted; and the Clerk of Court shall send a copy of this Memorandum and Order to the Court Reporter, Allan Kuhlman, so that he may prepare a transcript for the plaintiff (appellant) and the Eighth Circuit Court of Appeals; and as soon as practicable, Mr. Kuhlman shall forward the plaintiff-appellant's copy of the transcript to Mr. Martin.

DATED this 19th day of December, 2005.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge